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BellSouth Telecommunications, Inc.

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October 10, 2002

TELECOMMUNICATIONS AUTHORITY
DOCKET ROOM

VIA HAND DELIVERY

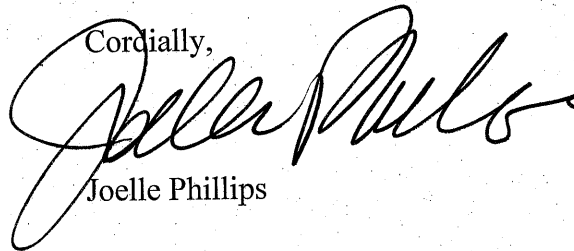
The Honorable Sara Kyle, Chairman
Tennessee Regulatory Authority
460 James Robertson Parkway
Nashville, Tennessee 37243

Re: *Petition of Tennessee UNE-P Coalition to Open a Contested Case Proceeding to
Declare Switching an Unrestricted Unbundled Network Element*
Docket No. 02-00207

Dear Chairman Kyle:

Enclosed herein for filing, please find the original and fourteen copies of BellSouth's response to the October 8, 2002 letter from counsel for the UNE-P Coalition to Hearing Officer Ron Jones. Copies of the enclosed are being provided to counsel of record.

Cordially,



Joelle Phillips

JP/jej

Enclosure

cc: The Honorable Ron Jones, Hearing Officer

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VIA HAND DELIVERY

The Honorable Ron Jones, Hearing Officer
Tennessee Regulatory Authority
460 James Robertson Parkway
Nashville, Tennessee 37243

Re: *Petition of Tennessee UNE-P Coalition to Open a Contested Case Proceeding to
Declare Switching an Unrestricted Unbundled Network Element*
Docket No. 02-00207

Dear Director Jones:

I am writing on behalf of BellSouth in response to a letter hand delivered to the Hearing Officer on October 8, 2002 from Henry Walker. While that letter shows a "cc" to Joelle Phillips, BellSouth was not served with the letter until 5:00 p.m. on October 9, 2002 (and then only after our inquiry to counsel). It should go without saying that it is the obligation of parties and counsel practicing before the Authority to ensure that service of pleadings and letters to the Authority is made reasonably contemporaneously with the filing of such documents.

BellSouth was extremely disappointed to review Mr. Walker's letter. In his letter, Mr. Walker represents that he and his clients have "concluded" that the parties would be unable to reach agreement on stipulations regarding the market for local switching, including the number and functionality of switches serving Nashville. This "conclusion" came as quite a surprise to BellSouth given that counsel for Petitioners *never* responded to the stipulations, *never* spoke with counsel for BellSouth about concerns or questions regarding the stipulations, and *never* proposed alternative stipulations prior to (or since) filing the letter. Negotiated stipulations cannot be reached when one party refuses to negotiate.

Counsel for Petitioners asserts that the information regarding CLEC switch locations and capabilities constitutes information that the Coalition "cannot independently confirm." Counsel for Petitioners fails to mention that, in BellSouth's cover letter transmitting the stipulations, BellSouth specifically noted that the information regarding the number of switches had been drawn from the Local Exchange Routing Guide or "LERG," which is an industry-compiled document available to all of the Petitioners in this docket. (As the Hearing Officer may recall from the Pre-Hearing Conference, one of the suggestions offered by non-party XO

Communications was that some of the information at issue was available or referenced in the LERG.) If, in fact, the Coalition members have been unable to independently confirm information using the LERG, then it is noteworthy that they made no attempt to inquire of BellSouth about how BellSouth had done so.

The October 8th letter goes on to accuse BellSouth of submitting "argumentative assertions" beyond the scope of BellSouth's original data requests. BellSouth attempted to offer a proposed stipulation as to various factual matters related to the market for local switching. (BellSouth's proposed stipulation is attached.) Information regarding the market for local switching is obviously relevant. Such information would be vital to conduct the required necessary and / or impair standard. It was BellSouth's hope that the stipulation could be as broad as possible to obviate the need for third party discovery. Had counsel for Petitioners been unable to understand the nexus between the various individual stipulations offered by BellSouth and BellSouth's original data requests, it would have been appropriate to inquire about that prior to making such representations to the Hearing Officer.

BellSouth remains willing to negotiate a stipulation with the Coalition. Obviously, however, this will require that the Coalition participate in the process of arriving at such a stipulation. If the Coalition is unwilling to respond to BellSouth's stipulations, then BellSouth respectfully suggests that the Coalition should offer its own stipulations for BellSouth's consideration.

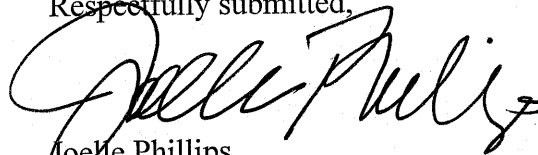
At the Prehearing Conference, the Petitioners offered no suggestion about how the Authority was to obtain information about the market for local switching, which the Authority needs in order to conduct the analysis the Petitioners have asked it to conduct. Now the Petitioners refuse to even attempt to reach a stipulation. In short, the Petitioners have requested relief from the TRA and then done nothing whatsoever to facilitate efforts by BellSouth and the TRA to collect the very evidence that is needed to properly analyze their request in a way that adequately addresses the concerns raised by third parties.¹ BellSouth agreed that a stipulation adequately addressing the relevant facts was a reasonable alternative to requiring non-party participation in this docket. If Petitioners are not prepared, however, to make reasonable efforts to reach such a stipulation, then BellSouth questions whether the Petitioners are not, in fact, trying to take advantage of the non-party concerns over discovery in order to prevent the Authority from receiving evidence on the real state of the market for local switching.

¹ BellSouth continues to maintain that a protective order should be sufficient to address the third party concerns over confidentiality. BellSouth, however, has been and remains willing to consider alternative methods of presenting the facts that are necessary to its defense in this docket in order to avoid such concerns.

The Honorable Ron Jones, Hearing Officer
October 10, 2002
Page 3

In light of this situation, BellSouth respectfully requests that the Hearing Officer consider the following alternatives: (1) ordering Petitioners to prepare and propose their own draft stipulation for BellSouth's review, (2) accepting the stipulations that BellSouth has proposed, or (3) dismissing this case in light of Petitioners' refusal to cooperate in discovery.

Respectfully submitted,



Joelle Phillips

JP/jej



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October 4, 2002

VIA TELECOPIER
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Henry Walker, Esquire
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Re: *Petition of Tennessee UNE-P Coalition to Open a Contested Case Proceeding to
Declare Switching an Unrestricted Unbundled Network Element*
Docket No. 02-00207

Dear Henry:

Attached please find BellSouth's proposed Stipulation for use in the above-referenced docket. With respect to the number of CLEC switches referenced in the Stipulation, those numbers are based upon information contained in the Local Exchange Routing Guide (the "LERG").

We look forward to discussing the Stipulation with you.

Cordially,

A handwritten signature in black ink, appearing to read "Joelle Phillips", written over the typed name.

Joelle Phillips

JP/jej

Enclosure

cc: Chuck Welch (w/enclosure)

BEFORE THE TENNESSEE REGULATORY AUTHORITY
Nashville, Tennessee

In Re: *Petition of Tennessee UNE-P Coalition to Open a Contested Case Proceeding to Declare Switching an Unrestricted Unbundled Network Element*

Docket No. 02-00207

STIPULATION

BellSouth Telecommunications, Inc. and the Petitioners in this docket¹ stipulate for the purposes of this docket to the following facts:

1. CLECs in Tennessee have operational networks with at least one operational switch in the following markets: USLEC (Chattanooga, Knoxville, Memphis, Nashville); NewSouth (Nashville); AT&T (Chattanooga, Knoxville, Nashville); KMC (Chattanooga); MCI WorldCom (Knoxville, Memphis); BTI (Knoxville, Nashville); NuVox (Memphis, Nashville); and Xspedius (Memphis, Nashville); Adelphia (Nashville); ITC^DeltaCom (Nashville); and ICG Telecom (Memphis).
2. CLECs have at least 18 switches in Nashville, including 5ESS and DMS500 switches.
3. CLEC switches in Nashville provide functionality and capabilities as described in the manufacturer's technical specifications for such switches. All the switches in Nashville are digital switches.
4. The sale of local switching by CLECs with local switches is a component of the business plan for such CLECs.

¹ Petitioners are: Access Integrated Network, Inc.; AT&T Communications of the South Central States, Inc.; Birch Telecom of the South, Inc.; Ernest Communications, Inc.; MCImetro

5. The switches deployed in Nashville are manufactured by Lucent or Nortel.
6. CLECs providing switching services in Nashville compete against BellSouth and other CLECs and provide service to multi-line customers.
7. CLECs that sell switching using the most modern equipment, cannot offer such switching profitability at TELRIC rates.
8. BellSouth provides enhanced extended links ("EELs") as defined in 47 C.F.R. § 51.319(c)(2) in its Nashville density zone one central offices located in the Nashville MSA.
9. The FCC is currently evaluating its unbundling rules, including its rules regarding local switching.
10. Currently, in Tennessee, a CLEC can purchase unbundled switching from BellSouth, at TELRIC rates, to serve any and all customers with three or fewer lines, anywhere in the state. CLECs can also purchase unbundled switching from BellSouth at TELRIC rates to serve customers with four or more lines in 181 of BellSouth's 196 wire centers in Tennessee. In the remaining 15 wire centers, which are located in Nashville and are subject to the FCC local switching exemption, CLECs can purchase unbundled local switching from BellSouth for customers with four or more lines at market-based, rather than TELRIC, rates.
11. CLEC switches in Tennessee are currently being used to serve hundreds of thousands of access lines, the majority of which are for business customers.
12. CLECs are continuing to deploy their own switches.
13. Business customers are the customers most likely to have four or more lines.
14. At least three CLECs in Tennessee offer wholesale switching service to other CLECs.

Access Transmission Services, LLC; MCI WorldCom Communications, Inc.; New South

15. In Tennessee, the benchmark for hot cut timeliness is 15 minutes per loop and BellSouth meets this benchmark 99% of the time.

16. Switch manufacturers actively market switches to both CLECs and ILECs alike in Nashville. The cost of switches has fallen over time.

17. BellSouth provides hot cuts in Tennessee within a reasonable time interval, and at an acceptable level of quality.

18. CLECs can provide local switches in Nashville with switches from other locations outside of Nashville and outside of Tennessee. As of December 2001, CLECs had deployed approximately 360 remote switches, nationwide, in addition to more than 1300 host switches.

19. The latest generation of switches manufactured by Lucent and Nortel, including 5ESS and DMS500 switches, has capacity for as much as 600,000 lines.

20. In Tennessee, as of July 31, 2002, CLECs serve a conservatively estimated over 200,000 total lines using either entirely their own facilities, or using a combination of their own facilities and BellSouth's UNE loops (not UNE-P).

Respectfully submitted,

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Communications Corp.; and Z-Tel Communications, Inc.

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Counsel for UNE-P Coalition

CERTIFICATE OF SERVICE

I hereby certify that on October 10, 2002, a copy of the foregoing document was served on counsel for known parties, via the method indicated, addressed as follows:

- ☐ Hand
- ☐ Mail
- ☒ Facsimile
- ☐ Overnight
- ☐ Electronic

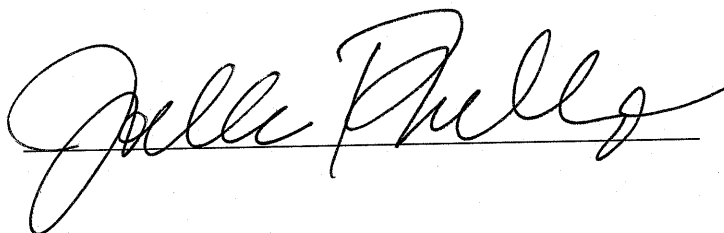
Henry Walker, Esquire
Boult, Cummings, et al.
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hwalker@boultcummings.com

- ☐ Hand
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A handwritten signature in cursive script, appearing to read "Julie Phillips", written over a horizontal line.